Govt. Pr.—15,'36—15-11-[illegible]

(13)

Home (1936) Department.

ts SERIES.

Letter
G.O. No. 781

DATED 30.5.1936

[Despatch Abstract.]

Government Pleader - South Kanara - Disputed cases of court fee in District Court, South Kanara - Notice High Court addressed.

L.C. 1957 B
18.3.36

Ref. 1014--36--B--4.

South Kanara Collector's Office,
Mangalore, dated 15th March 1936.

From

E. M. Gawne, Esq, I.C.S.,
Collector of South Kanara.

To

The Secretary to Government,
Law (General) Department,
Madras.

Sir,

Court fees--disputed cases--notice to Government Pleader.

Ref:- G. O. No. 2053, Law (General) Department dated 18th June 1935.

I request further instructions with reference to G. O. No. 2053 Law (General) Department dated 18th June 1935 in respect of the appearance of pleaders on behalf of Government in Civil Courts in cases where the Court fee is disputed. The Government Pleader, Mangalore, says that he has recently appeared and argued on behalf of Government in five cases on the file of the District Court, South Kanara, in which no notice was received by me and no instructions had been sought from me. He says that the present practice in the District Court of South Kanara is that in all cases where there is a dispute regarding the adequacy of the Court fee paid on a plaint or an appeal memo the Court issues notice to him and expects him to argue the question of Court fees and that in such cases the notice being short, he is not able to communicate with me but has to argue the Court fee questions with reference to the papers in Court He claims that he must be considered to have been engaged in these cases on behalf of Government and that fees may be paid to him at Rs.10 for every case in which notice

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was so served on him to argue the cases. In the cases now under consideration, it has to be noted that the Court has not decreed any costs to Government and it is not possible to find out whether the cases involved any questions of general principle and were of any importance.

2. In G. O. No. 2053 Law (General) Department dated 18th June 1935 referred to above as well as in G. O. No. M.S.4462 Law(General) Department dated 5th December 1931, it is expressly stated that Government Pleaders or Private Pleaders might be engaged to argue cases of disputed court fees on behalf of Government in muffassal Courts provided the sum involved is considerable or the question raised involved general principles. It has to be presumed but there is no material available to verify that the District Judge issues notice and seeks the advice of the Government Pleader only in such cases but it is obvious that as the Government Pleader sees the records in the Court itself, no special preparation is possible nor expected from him. The question therefore is whether the appearance of the Government Pleader in these cases should be considered as duties covered by the retaining fee paid to him or whether the special fee of Rs.10 has to be paid to him in each case. Evidently in all cases, the question of costs has not been taken into consideration by the Court as the cases did not involve much work to the Government Pleader. I do not feel also that the Government Pleader should appear in all such cases as soon as notices are served on him by the Court, without reference to the amount of Court fee involved under dispute. I solicit clear instructions.

3. Orders may be passed regarding the question of payment in the five cases in which the Government Pleader has already appeared and instructions issued regarding the necessity of his appearance in such cases, in future on receipt of notice from the Court irrespective of the merits or importance of the dispute involved.

Your obedient servant,

Collector.

HOME DEPARTMENT.

Memo. No. 1957/B-2 dated 30.5.36

Govt. Pleader, South Kanara
Disputed cases of court fee - Notice-
Letter from the Collector of South -
Kanara, Ref: 1014-36-B-4 dated the
15th March 1936.

The Collector of South Kanara is informed that in the five cases referre to in his letter cited above fees may be paid to the Govt. Pleader, South - Kanara, with reference to the orders i G.O.No. 2053 L.G. dated 18-6-35.

2. As regards the question whether the Govt. Pleader, should appear on receipt of notice from the Court irrespective of the merits or importanc of the dispute involved, the Collector is informed that the Govt. Pleader shou appear in all cases where notice is ~~issued~~ issued to him by the Court. A copy of the Collector's letter has, however, ~~be~~ been sent to the High Court and it has been requested to issue such instructions as it may deem fit to ensure that the Dt. Court sends notice ~~as~~ to the Govt. - Pleader only in cases where the amount of court fee in dispute is considerable or where the question raised is an - important one involving general principles.

To the Collector of South Kanara.

Sd. by Vam
Post
Messenger

Dated. 6.1936.

Home Department.

C.1957B. From the Collector of South Kanara, Ref. 1014-36-B-4, dated 15.3.36.

Subject: Court Fees - Disputed cases - Notice to Government Pleader.

A.S.

Attention is solicited to G.O.No.2053 L.G., dated 18.6.35, in which the Govt. sanctioned permanently the scheme of engaging pleaders to argue cases of disputed court fee on behalf of Govt. in mufassal courts. The scheme was first suggested by the Hon. the Judges in 1931. They then suggested that local Govt. Pleaders should be called upon to argue the case on behalf of Govt./not in cases where the fee to be paid to a Govt. Pleader would almost cover the amount of court fee in dispute, but only in cases where the sum involved was considerable or where the question raised was of general importance involving general principles.

2. The Collector of South Kanara reports that in five cases on the file of the Dt. court, South Kanara, the Govt. Pleader, Mangalore, appeared without obtaining his instructions. It is reported that the Govt. Pleader says that the practice in that court is to issue notices to the Govt. Pleader in all cases of dispute regarding the adequacy of the court fee paid on a plaint or a memo. of appeal and that, in such cases, the notice being short, the Govt. Pleader is not able to communicate with the Collector but has to argue the court fee questions with reference to the papers in court. The Collector considers that the Govt. Pleader should not appear in all such cases as soon as notices are served on him by the court, without reference to the amount of court-fee involved. He requests instructions -

(1) as to the payment of fees to the Govt. Pleader, Mangalore, in the five cases in which he appeared; and

(2) as to the necessity of his appearance in such cases in future on receipt of notice from the court irrespective of the merits or importance of the dispute involved.

3. Item (1) The Collector enquires whether the appearance of the Govt. Pleader should be considered as duties covered by the retaining fee paid to him or whether a fee of Rs.10 has to be paid to him in each case. It is subd. that the monthly retaining fee is intended for consultative work e.g., giving opinions and for miscellaneous work done at home, e.g., drafting pleadings etc. In the present cases the Govt. Pleader appeared in court and although no special preparation was made, still he should have studied the papers, and made some preparation for arguing the cases in court. It does not appear that the monthly retaining fee can be said to cover such appearances. It is subd. that fees may be paid to the Govt. Pleader, Mangalore, for his work in connection with the five cases at the rate of Rs.10 for each case. It may be mentioned that the Govt. Pleader, Madras, appears at the instance of the High Court in cases of disputed court fee and that he is paid fees for appearances in such cases.

4. Item (2). As stated in para 1 above, the intention of the Hon. the Judges was that the Govt. Pleader should appear only in cases ..... the sum involved was considerable or where the question raised was of general importance involving general principles. From the High Court's letter on pp.1-2 of

(E) G.O. No.4462 L.G., dated 5.12.31, it will be seen that the object of engaging a Pleader to argue the question was to assist the Court and it therefore follows that the question whether a case is such as to justify the services of a pleader being requisitioned should be determined by the court in which the case has arisen. If the court considers the appearance of a pleader on behalf of Govt. necessary in any case, and issues a notice to him, it seems that the pleader should appear, even though the need for entering appearance may be doubted by others, say, the Collector. It may be mentioned in this connection that Govt. desired the High Court to ~~make~~ issue a rule making it obligatory on the part of civil courts in the mufassal to issue notice to the Govt. Pleader in cases of disputed court fee, but the High Court stated that in practice notices were being issued whenever necessary, that this was sufficient and that there was no need to make a rule. The High Court has also taken the view that Govt. have no right to be heard in ~~cases of~~ regard to questions of disputed court fee arising in cases to which Govt. are not a party. Having regard to the fact ~~that the issue of a notice by the court to the pleader on behalf of Govt. is not obligatory in a case of disputed court fee to which Govt. are not a party~~, and to the fact that Govt. desired the issue of notice in all cases of disputed court fee, it seems preferable to allow the Govt. Pleader to appear on behalf of Govt. in all cases in which notice is issued to him by the court. ~~If the pleader does not appear in all cases but only in some cases, then the court may not issue notice in really important cases and this may prove disadvantageous to Govt.~~

5. If it is considered that the appearance of pleaders should be restricted to important cases, it seems that a copy of the Collector's letter may be sent to the High Court. Its attention may be invited to

para 2 of its letter dated 23.7.31 and it may be asked to consider the desirability of issuing a circular to courts to see that notices are issued by presiding officers in mufassal courts only in the cases contemplated in the paragraph referred to above. It may refuse to do so on the ground that the issue of a notice is a matter of judicial discretion which cannot be controlled by an administrative circular. Submitted for orders whether the High Court should be addressed.

6. ~~The file may be sent to the~~ Legal Dept. ~~for remarks on paras 4 and 5 above.~~ Finance may also see.

The Court alone has to decide whether the services of the Govt. Pleader are necessary in disposing of a case of disputed court fee. When a court sends a notice, the G.P. has to appear & he should be paid fees for his appearance

2/2 It appears from the calls letter that the Court of Kanara issued notice in all cases of disputed court fee. This is not in accordance with G.O. M. 4462 dt 5.12.31 which has been issued at the instance of the High Ct. The Govt. Pleader should be engaged only when the sum involved is considerable and

A | and the q^n raised is of ~~general~~ importance involving general principle. This principle has also been repeated in the orders under G.O. No 2053 dt 28.6.35 which have been comm^d. to the High Ct and all Dt. Judges. However a copy of the Collr's letter may be ~~sent~~ sent to the High Ct and it may be asked to issue such instructions as it may deem necessary to ensure that the Dt. court sends notice to G.P. only in the cases referred to at A above. No special circular will also be necessary as there have been no complaints from other Collrs in this regard.

The H.Ct may not object as the G.O. at E was issued on their recommn.

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H.S.

A draft memo to the Collector of South Canara is submitted with reference to para 3 above. A draft letter to the High Court is also submitted. The file may be sent to him for acceptance of the draft memo to the

ASSISTANT SECRETARY TO GOVERNMENT
1-MAY 1936
HOME DEPARTMENT

(P. T.O.)

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Collector

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BA
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MV
15/5

Ordinary Post
29

Home 1957 B-1

Fin (E.I)
Draft memo: may be
accepted
Cols
21.5.36.

GS/25/5/36
Home

D.S
Home

Home Dept
Draft memo: Hello may issue.

Home 16238 E-1
25.5.36
Home 1003 E
29.5.36

Rai
26/5
26/5

Letter Ms. 781 HOME DEPARTMENT.

30.5.36

To

The Hon'ble the C.J.

High Court of Judicature,

Madras.

(with copy of Memo.)

Hon'ble Sir,

Govt. Pleader - South Kanara - Disputed cases of court fee in Dt. Court South Kanara - Notice.

I am directed to forward copies of letter Ref: 1014-36-B-4, dated 15-3-36 from the Collector of South Kanara on th subject cited above and of the Memo. - issued to him in reply. I am to invite attention to G.O.Ms. 4462 Law (Gen) dt. 5-12-31 in which paragraph 2 of Mr.White's letter, R.O.C. No. 4237 B.I.30 dated 23-7-31 ~~in which it was suggested~~ that the services of the Govt. Pleader should be engaged only in cases where the sum involved was considerable or where the question raised was of general importan involving general principles. This ~~suggestion was accepted in G.O. No. 448 Law (General) dated 5-12-31~~. I am to request that the Hon. the Judges will be so good as to issue such instructions as they may deem necessary to ensure that the Dt. Court, South Kanara, sends notice to the Government pleader only in the cases ~~contemplated by the High Court and mentioned above~~ of the kind mentioned above.

I have etc

Vam Post

Initials. 1-6-1936

C.F.30.

DEPARTMENT.

Received 31 JUL 1936 192 . *Registered* Home 465 G 31-7-36 192

HOME DEPARTMENT

Subject.

Home Dept

A.S

It seems unnecessary to send a copy of the Dt.-Judge's letter to the Collector. The Dt. Judge has told the Govt Pleader that the case applies to the Court for extension of time for obtaining instructions from the Collector. The G.P. will no doubt take instructions from the Collector. This may be filed with Letter 78 dated 29.5.36

'K' - p 2 wipe

(N)

6-8.

6-8.

ENCLOSURES.

No .....

.....

Spare copies.....

R.O.C. No. 2596 B-1/36.

Station Madras, *Dated the* 29th July 1936 192=.

From (Name) D. Appa Rao Esquire, (Bar-at-Law),

(Designation) Registrar, High Court of Judicature,

Madras.

(43)

To The Secretary to the Government of Madras,

(HOME) Department.

(with enclosure)

Sir,

Disputed cases of court fee in the District Court of South Kanara - Notice to Government Pleader.

(N) Ref:- Your letter Ms.No.781 dated 30th May 1936.

I am to forward for the information of the Government, a copy of the letter from the District Judge of South Kanara, in which he reports that notice is not, invariably, issued to the Government Pleader in all cases in which a question of Court fee arises.

I have the honour to be,
Sir,
Your most obedient servant,

D. Appa Rao

Ag. Registrar.

BCR. RC

Copy of letter No.3200/B-1 dated 6th July 1936 from the District Judge, South Kanara, Mangalore to the Registrar, High Court, Madras.

Subject:- Government Pleader, South Kanara - Disputed cases of court fee in the District Court, South Kanara - Notice.

Reference:- Endorsement R.O.C.No.2596-B-1/36 dated the 9th June 1936 on copy of letter No.781-Ms. Home Department dated the 30th May 1936 from the Secretary to the Government of Madras to the Honourable the Chief Justice, High Court, Madras.

With reference to the above endorsement communicating copies of Ref.1014-36-B4 dated 15-3-1936 from the Collector of South Kanara on the subject mentioned above and of the memo issued to him in reply and calling for my remarks, I have the honour to state as follows:-

Notices to Government Pleader recently issued by this court referred to in the Collector's letter were issued having regard to the principles laid down in G.O.Nos.4462 Law (General) dated 5-12-1931 and 2053 Law (General) dated 18-6-1935 and it is not quite correct to state that notices are being issued in all cases. In issuing such notices, the court was also influenced to some extent by the desire of the Government indicated in paragraph 3 and 4 of High Court R.O.C.No.4561/35 B-1 dated the 9th November 1935. I do not know what final orders have been passed as a result of the various opinions called for from the District Judges by this R.O.C. I have, however, issued strict instructions that notice should be go to the Government Pleader only in exceptional cases where a question of general importance is involved or the amount of court fee is considerable and in no others.

I do not know why the Government Pleader could not take instructions from the Collector before appearing in the cases in question. Shortness of notice does not seem to be a very good excuse because he could always have asked for time, and the court would have granted time for obtaining instructions. I have told the Government Pleader about it.

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The two enclosures received with the letter under reply are herewith returned.

BCB.